end these may serve, it is not that of professional training. Of course, in a case-law system like ours, the legal mind is developed only through the reading and study of cases and a book of the historical sort can serve only as an introduction to the study of case-law, while a work of the more comprehensive variety finds its chief value in leading the student to the discriminating study of the cases cited.

To return to the books under consideration, it should be said that Professor Wurt's volume, because of its greater fullness and thoroughness, comes much nearer to the class of educational treatises than does the rival work of Warvelle, while its historical learning and consistent exposition of the English common law as the basis of the American law of real property give it additional usefulness as an introduction to the more intimate study of the law. Perhaps the principal defect of the book is its undue reliance upon the work on which it is avowedly based, Professor Minor's Institutes, as the sufficient authority for many if not most of the statements of law, which it contains. This is, of course, to "incorporate by reference" much if not all of Minor's treatise in the book before us and to drive the student to the former to find the cases in which the statements of the latter are based. To say that the student need not go to Minor for the cases is not only to place that learned but modest gentleman beside Coke as a legal authority, a position which he would be the first to disclaim, but to deprive the book of all its value as a guide into the echoing workshops where the law of the land is forged.

*G. W. K.*

THE CONSTITUTIONAL LAW OF THE UNITED STATES. By WESTEL WOODBURY WILLOUGHBY, Ph. D. New York: BAKER, VOORHIS & Co. 1910. Vol. I, pp. lxxxv, 628; Vol. II, pp. xxx, 629-1390.

Books may be written on the constitutional law of the United States for many purposes, for the undergraduate's text-book, the law student's elementary guide, the practitioner's hand-book, for the advanced student whether he be a graduate student of public law or the lawyer seeking fundamental principles, rather than the mere case in point. Judging from his preface and from the contents, it is for the latter class that Professor Willoughby intended to write, and has written. If this be the purpose of the treatise, though not a strikingly great work, it is the best that has appeared in its field.

In making this statement Watson on the Constitution, which came out in June, 1910, is not over-looked. Hare's American Constitutional Law, published in 1889, is not entirely supplanted, nor is Pomeroy's briefer work, for, though those treatises have fallen behind the times, the familiarity of their writers with the whole field of law give them a lawyer-like grasp and lawyer-like expression which Willoughby falls short of, though the latter's work is far from that of the mere political scientist, and more than offsets the advantages of Hare and Pomeroy by breadth and modernness of view. Besides it deals with many important topics not touched in those works. Story's and Kent's commentaries have, of course, taken their place as works mainly of historical interest. Cooley on Constitutional Limitations is still supreme in its field; for Willoughby devotes relatively little space to its topics. Cooley's smaller work is the student's guide, but is defective in political theory.

Of course, it was expected that Professor Willoughby so far as he touched upon political theory, particularly the theory of sovereignty

in our system and the nature of our Union, would adhere to the views previously expressed by him. He has never sympathized with what Professor Burgess has called the juristic theory of our constitutional history. Professor Willoughby still adheres to his concept of a "Federal State," "such as the United States is now agreed to be," he remarks. (Vol. I, p. 86.) Yet he says, "The individual Commonwealths, having a political status only as members of the Union, have not the legal power to place themselves, as political bodies, in opposition to the national will." (Vol. I, p. 87.) On page 62, he says, "Since the close of the Civil War the sovereignty of the National Government has been undisputed." Thus, he does not hold consistently to that clarifying distinction between sovereignty and government that, to some, seems so fundamental. No nationalist, however, except a "new nationalist," would find fault with the discriminating chapter on Principles of Constitutional Construction, the treatment of Division of Powers, the Supremacy of Federal Authority, and the Maintenance of Federal Supremacy.

The preface accurately states the scope of the treatise:

"In the preparation of this work, the aim has been to give a logical and complete exposition of the general principles of the constitutional law of the United States. The effort has been to ascertain and discuss critically the broad principles upon which have been founded the decisions rendered by the Supreme Court of the United States in the leading cases, and thus to present, as a systematic whole, a statement of the underlying doctrines by which our complex system of constitutional jurisprudence is governed. The performance of this purpose has required that attention should be devoted rather to a consideration of those principles of our public law which are fundamental, and especially of those the possible implications of which are not yet certainly determined, than to a statement in minute detail of those adjudications which, in themselves, establish no general rule of law, or illustrate no novel application of one."

It seems to the reviewer, however, even though the treatise purports to deal only with fundamental principles, that the field of constitutional limitations on the National and State governments is slighted. Only 170 out of 1332 pages are devoted to them. Nothing is more fundamental in American law than these limitations. Only 17 pages are devoted specifically to due process of law, and it does not entirely answer to say that elsewhere in the treatise this limitation is incidentally discussed. In comparison, the *Dred Scott* case is not worthy of 16 pages (Vol. I, 262-269, 353-361), nor the *Insular Cases* to 32 pages (Vol. I, 411-442), nor the "Suability of States" to 45 pages (Vol. II, 1061-1106). *Ex post facto* legislation is disposed of in 28 lines of text (Vol. II, 803-805, 881) and consists of the familiar quotation from *Calder* v. *Bull*, the holding in *Thompson* v. *Missouri* and the summary statement, after the quotation from *Calder* v. *Bull:*

"By later decisions this definition of *ex post facto* legislation has been broadened so as to include all laws which in any way operate to the detriment of one accused of a crime committed prior to the enactment of such laws." Though a page of quotation from *Thompson* v. *Utah* is appended in a foot-note, which summarizes many cases, this does not excuse the inaccurate generalization of the text.

A statement of the preface is worth mention:

"The author wishes also to express generally his debt to the various law magazines published in this country. These journals are an honor

to American legal scholarship, and to the articles contained in them the author owes more than he has been able specifically to acknowledge."

*D. O. McG.*

FORMS, RULES AND GENERAL ORDERS IN BANKRUPTCY. Collated, revised, and annotated by MARSHALL S. HAGAR, and THOMAS ALEXANDER. Albany: MATTHEW BENDER & Co. 1910. pp. li, 747.

This book should be very useful to that portion of the Bar who practice in the bankruptcy courts. The *imprimatur* of Mr. Alexander, who is the commissioner of the most important bankruptcy district of this country, would alone commend the forms to the practitioners on this side of the Federal Courts. But apart from that, the careful work of both authors, in the selection of the precedents set before us, should suffice to carry their product into active use. The collection the book contains of various general and local rules of court is very interesting.

The Bankrupt Act of 1898 followed the excellent idea of the similar English statutes, in leaving all but the fundamental points of practice to be formulated by the judges in the way of court rules or the course of decision. Accordingly the Supreme Court at once framed a series of General Orders in Bankruptcy, which are still of force. These, however, soon proved insufficient for many important questions of daily occurrence. So many of the District Courts adopted rules of their own, as supplemental to the Supreme Court's General Orders. The present volume has value in that it contains as the authors state, the local rules "of many of the important centres throughout the country." Some of the districts whose rules are represented are the four Districts of New York, the Eastern District of Pennsylvania, and the Districts of Massachusetts and California.

The profession should feel indebted to the authors for bringing together the rules of the various District Courts. Although the practitioner would be chiefly interested in the rules of his own district, yet it can never fail to profit one to glance at the ordinances of neighboring courts. Certainly those of the Southern District of New York might serve as a model for any court whose business comes from the activities of a commercial centre.

The forms, however, are the major feature of the work before us. At the same time that it published its General Orders in Bankruptcy, the Supreme Court established a series of official forms for the use of practitioners. While these were adapted for a great many steps in bankruptcy proceedings, nevertheless it was not long before official precedents were found wholly inadequate for very many cases of common occurrence. Our authors in their preface state that some of these forms were held to be insufficient and demurrable. Certainly they did not furnish a complete guide to the practice of the bankruptcy courts. Some of them still remain of standard use, but the majority have been freely discarded for the more precise moulds upon which the course of actual practice has set its approval. The chief value of the present work is that most of these forms of daily use, scores of whose prototypes lie in the files of the various clerks' offices, have been brought together for ready reference.

A good example is in the form for the well-known "omnibus proceedings" to refer to the referee, as a master, all reclamation proceedings relative to property in the trustee's hands. Such a course of